



Federal Communications Commission  
Washington, D.C. 20554

DA 17-629

June 28, 2017

Rob Somers, General Counsel  
Smartcomm LLC  
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Re: Informal Request to Remove B/ILT Frequencies for SMR Licensees Call Signs  
WQVN556, WQVQ706, WQVQ399, WQVQ486, WQVR621, WQWK603, WQXB356,  
WQVR805, and WQVP773

Dear Mr. Somers:

This letter addresses the informal request that you submitted on February 25, 2016, on behalf of Smartcomm LLC (Smartcomm).<sup>1</sup> Smartcomm seeks the removal of Business/Industrial/Land Transportation (B/ILT) channels from the above-referenced 800 MHz Specialized Mobile Radio (SMR) licenses. For the reasons set forth below, the informal request is dismissed in part and denied in part.

*Background.* All of the frequencies at issue are in the 800 MHz Expansion Band. The Commission created the Expansion Band and Guard Band to provide spectral separation between commercial licensees operating in the Enhanced SMR segment of the 800 MHz band above 817/862 MHz, and public safety licensees operating below 815/860 MHz.<sup>2</sup> The Public Safety and Homeland Security Bureau and the Wireless Telecommunications Bureau released Expansion and Guard Band channels for licensing in regions which had completed band reconfiguration in 2012<sup>3</sup> and 2014.<sup>4</sup>

Expansion Band spectrum is designated mostly for SMR stations, with the remainder for B/ILT Pool eligibles.<sup>5</sup> B/ILT eligibility is generally limited to entities engaged in commercial, educational, medical, or similar activities, or entities providing communications service to their own B/ILT-eligible affiliate.<sup>6</sup> Section 90.617(b) of the Commission's rules provides that SMR systems, which are defined as

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<sup>1</sup> Letter from Rob Somers, General Counsel, Smartcomm LLC, to Marlene H. Dortch, Secretary, FCC (Feb. 25, 2016) (Informal Request).

<sup>2</sup> See *Improving Public Safety Communications in the 800 MHz Band*, Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order, 19 FCC Rcd 14969, 15053-55, paras. 154-158 (2004).

<sup>3</sup> See *Public Safety and Homeland Security Bureau and Wireless Telecommunications Bureau Announce the Completion of 800 MHz Reconfiguration in Certain NPSPAC Regions*, Public Notice, 27 FCC Rcd 14775, 14780-82 (PSSB/WTB 2012).

<sup>4</sup> See *Public Safety and Homeland Security Bureau and Wireless Telecommunications Bureau Announce the Completion of 800 MHz Band Reconfiguration in Certain NPSPAC Regions*, Public Notice, 29 FCC Rcd 16290, 16292-94 (PSSB/WTB 2014).

<sup>5</sup> See 47 CFR § 90.617(b), (d).

<sup>6</sup> See 47 CFR §§ 90.33(a), 90.35(a).

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those “in which licensees provide land mobile communications services (other than radiolocation services) in the 800 MHz and 900 MHz bands on a commercial basis to entities eligible to be licensed under this part, Federal Government entities, and individuals,”<sup>7</sup> will not be authorized on 800 MHz B/ILT channels.<sup>8</sup>

Smartcomm notes in its informal request that the above-referenced SMR licenses were granted with a mix of SMR and B/ILT channels.<sup>9</sup> It requests that the Commission remove the B/ILT channels from the licenses.

*Discussion.* We believe that Smartcomm has correctly identified B/ILT frequencies that should not have been assigned to the licenses at issue. Due to the procedural posture of this matter, however, we will take no action with respect to these licenses.

First, we note that three of the licenses at issue have terminated for failure to construct.<sup>10</sup> Consequently, we dismiss the informal request as moot with respect to those licenses.

The remaining six licenses were granted in 2015.<sup>11</sup> As noted above, the informal complaint was filed in late February 2016. Section 1.106(f) of the Commission’s rules requires that a petition for reconsideration be filed within thirty days from public notice of the Commission’s action.<sup>12</sup> Because Smartcomm did not timely seek reconsideration of the license grants, only license modification under section 316 of the Communications Act of 1934, as amended,<sup>13</sup> is an available remedy, for requests for modification pursuant to section 316 are not subject to the same deadlines or procedural requirements as petitions for reconsideration.<sup>14</sup>

Section 316 permits the Commission to modify a station license if the action will promote the public interest, convenience, and necessity.<sup>15</sup> While there is a strong public interest in upholding the Commission’s rules and procedures, the fact that an application was improperly granted does not by itself

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<sup>7</sup> See 47 CFR § 90.7.

<sup>8</sup> See 47 CFR § 90.617(b).

<sup>9</sup> See Informal Request at 1-2.

<sup>10</sup> Call Signs WQVQ399, WQVQ486, and WQVR621.

<sup>11</sup> See FCC File Nos. 0006665329 (granted Apr. 16, 2015) (WQVQ706), 0006665330 (granted Apr. 7, 2015) (WQVN556), 0006668963 (granted Apr. 23, 2015) (WQVR805), 0006676787 (granted Apr. 10, 2015) (WQVP773), 0006962812 (granted Oct. 27, 2015) (WQWK603); 0007034871 (granted Nov. 23, 2015) (WQXB356).

<sup>12</sup> See 47 CFR § 1.106(f).

<sup>13</sup> 47 U.S.C. § 316.

<sup>14</sup> See *Pacific Gas and Electric Co.*, Memorandum Opinion and Order, 18 FCC Rcd 22761, 22764-65, para. 10 (2003) (*PG&E*); *California Metro Mobile Communication, Inc.*, Memorandum Opinion and Order, 17 FCC Rcd 22974, 22975, para. 6 (2002), *aff’d*, 365 F.3d 38 (D.C. Cir. 2004).

<sup>15</sup> 47 U.S.C. § 316(a)(1).

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require license modification.<sup>16</sup> Smartcomm does not argue that operation on the improperly granted B/ILT channels has caused (or has the potential to cause) interference to, or in any way affect, any B/ILT entity. Under these circumstances, we conclude that license modification is not necessary to promote the public interest.<sup>17</sup> We therefore deny the informal request with respect to the remaining licenses.

Accordingly, IT IS ORDERED that, pursuant to sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and section 1.41 of the Commission's rules, 47 CFR § 1.41, the Informal Request to Remove B/ILT Frequencies for SMR Licensees Call Signs WQVN556, WQVQ706, WQVQ399, WQVQ486, WQVR621, WQWK603, WQXB356, WQVR805, and WQVP773 filed by Smartcomm LLC on February 25, 2016, IS DISMISSED IN PART AND DENIED IN PART, as set forth above.

This action is taken under delegated authority pursuant to sections 0.131 and 0.331 of the Commission's rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

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<sup>16</sup> *National Science and Technology Network, Inc.*, Order, 24 FCC Rcd 9220, 9221, para. 4 (WTB MD 2009); *see also PG&E*, 18 FCC Rcd at 22767-68, para. 16 (2003) (“License modification pursuant to Section 316 should be undertaken only under those limited and unusual cases where, in the light of the circumstances, it is clear that such action will promote the public interest, convenience, and necessity.”).

<sup>17</sup> *See, e.g., Allegheny County Sanitary Authority*, Order, 25 FCC Rcd 17831, 17831, para. 5 (WTB MD 2010).